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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

E.I. DUPONT DE NEMOURS AND
COMPANY;

Defendant.

CONSENT DECREE

Civ. No. 11-7003 (NLH) (AMD)

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action concurrently with this Consent Decree alleging that Defendant, E.I. DuPont de Nemours and Company ("DuPont") violated Section 3007(a) of the Resource Conservation Recovery Act ("the Act" or "RCRA"), 42 U.S.C. § 6927(a) and violated 40 C.F.R. §§ 264.72 and 270.1(c).

WHEREAS, the Complaint against Defendant alleges that it unlawfully sent hazardous waste from its Deepwater, New Jersey Facility to a non-permitted facility, unlawfully stored hazardous waste at the Deepwater, New Jersey Facility, and failed to comply with an EPA information request pertaining to the Deepwater, New Jersey Facility.

WHEREAS, Defendant does not admit any facts alleged in the complaint and denies any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties to, and the subject matter of, this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1395(a), because Defendant operates a waste treatment facility in Deepwater, New Jersey, which is within the District, does business within the District,

and because the alleged violations occurred within the District. Defendant waives any and all objections it may have to the Court's jurisdiction, waives service of process in accordance with the requirements set forth in the Federal Rules of Civil Procedure, and, for purposes of this Decree, submits to the Court's jurisdiction.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 3008(g) of RCRA, 42 U.S.C. 6928(g).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the SET Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Regions 2 and 3, the United States Attorney for the District of New Jersey, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the SET Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree.

Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Completion Date" shall mean the date that all RCRA Railcars are rendered RCRA-empty or otherwise shipped from the Site, which at the latest will be on or before June 1, 2012;

c. "Consent Decree" or "Decree" shall mean this Decree;

d. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

e. "Defendant(s)" shall mean E.I. DuPont de Nemours and Company;

f. "Designated Rail Siding" shall mean the areas designated as such in the map attached hereto as Appendix A.

g. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

h. "Effective Date" shall have the definition provided in Section XIV.

i. "General Rail Siding" shall mean any rail siding within the area indicated in the map attached hereto as Appendix A, excluding the Designated Rail Siding and the SET Rail Spots

j. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

k. "Parties" shall mean the United States and the Defendant;

l. "RCRA Permit" shall mean permit number NJD002385730 issued by the New Jersey Department of Environmental Protection, as amended from time to time.

m. "RCRA Railcars" shall mean inbound railcars containing RCRA hazardous waste destined for treatment at the SET Facility.

n. "Section" shall mean a portion of this Decree identified by a roman numeral;

o. "SET Facility" shall mean Defendant's Secure Environmental Treatment facility located in Deepwater, New Jersey.

p. "SET Rail Spots" shall mean the rail sidings indicated as such in the map attached hereto as Appendix A.

q. "State" shall mean the State of New Jersey.

r. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$250,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of New Jersey, 970 Broad Street, Newark, NJ 07102, 973-645-2700.

10. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. E.I.

DuPont de Nemours and Company, and shall reference the civil action number and DOJ case number 90-5-1-1-09300/1 to the United States in accordance with Section XIII ("Notices") of this Decree; by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

12. RCRA Railcars accepted after March 30, 2012, shall be managed and stored only in accordance with the requirements set forth in RCRA and its implementing regulations, including 40 C.F.R. § 264.175, and according to a permit issued pursuant to 40 C.F.R. Part 270.

13. No later than June 1, 2012, DuPont shall empty all RCRA Railcars that contained hazardous waste received prior to March 30, 2012.

14. Management Activities for RCRA Railcars. Starting on the date that DuPont signs the Consent Decree and continuing through the date that all RCRA Railcars are rendered RCRA-empty or otherwise shipped from the Site, which at the latest will be on or before June 1, 2012 (the "Completion Date"), DuPont shall institute the following RCRA Railcar management activities:

a. DuPont shall sign the waybill accompanying any RCRA Railcar and shall note the date and time at which the railcar arrived at the General Rail Siding;

b. DuPont shall move all RCRA Railcars from the General Rail Siding to the Designated Rail Siding as soon as practicable but no later than within seventy-two (72) hours of arrival of those railcars on site.

c. To the maximum extent possible, DuPont shall store all RCRA Railcars on the SET Rail Spots. In any event, DuPont shall not store more than thirty (30) RCRA Railcars within the boundaries of the General Rail Siding at any given time.

d. DuPont shall not return a RCRA Railcar to the generator unless the railcar is "empty" within the meaning of RCRA, or DuPont complies with 40 C.F.R. § 264.72(d)(1) (2010). The requirements contained in 40 C.F.R. § 264.72(d)(1) (2010) shall supercede any

contrary requirements in the RCRA permit. In complying with 40 C.F.R. § 264.72(d)(1), DuPont shall, at a minimum:

- i. Consult with the generator regarding each non-empty RCRA Railcar before it is forwarded to another facility or returned to the generator; and
- ii. Forward non-empty RCRA Railcars to an alternative facility that can manage the waste unless it is impossible to locate such a facility.

15. Inspection Activities for RCRA Railcars. Starting on the date that DuPont signs the Consent Decree and continuing through the Completion Date, DuPont shall institute the following RCRA Railcar inspection activities:

a. DuPont shall visually monitor storm water originating from the Designated Rail Siding for signs of releases, and respond to any releases detected. Monitoring shall continue through the Completion Date;

b. DuPont shall minimize the area at the Designated Rail Siding where RCRA Railcars may be stored, by consolidating such railcars in as small a geographic area of the Designated Rail Siding as is practicable in a manner that is consistent with 40 C.F.R. §§ 264.176 and 264.177 regarding the storage of certain hazardous wastes in containers and shall, in conducting the monitoring activities set forth in this section, ensure cars are so configured;

c. DuPont shall conduct inspections of the Designated Rail Siding area and containment on at least a daily basis to determine whether any visible leaks or spills from RCRA Railcars have occurred at the dedicated rail storage areas by visually observing and checking each such railcar stored for leaks and the ground underneath and near all such railcars for any visible leaks or spills;

d. In the event that any RCRA Railcar located in the Designated Rail Siding is found to be leaking, DuPont shall, upon stabilizing and containing that leak, if necessary, immediately move such railcar(s) to an area with adequate secondary containment or provide an alternate means to contain the leak, promptly implement its contingency plan in accordance with 40 C.F.R. §§ 264.50-.56, and provide notice to EPA of any such leaks or releases within twenty-four (24) hours of discovery; and

e. DuPont shall maintain a daily inspection and storm water visual observation log. DuPont shall use the log to record each daily inspection and storm water visual observation. Upon request by EPA, DuPont shall provide copies of completed daily inspection logs.

VI. REPORTING REQUIREMENTS

16. Defendant shall submit reports as described in this Paragraph on April 13, 2012 and July 2, 2012. The reports shall include confirmation that the Defendant has met the requirements set forth in Section V of this Decree. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes fully aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

17. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

18. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

19. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

20. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by RCRA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

21. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

22. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

23. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

24. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Paragraphs 12, 13, 14.a-c, 15, or 16 of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$250	1 st through 14 th Day
\$500	15 th through 30 th Day
\$1,000	31 st day and beyond

25. For each RCRA Railcar that Defendant returns to the generator in violation of Paragraph 14.d, it shall pay a stipulated penalty of \$2,000.

26. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

27. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

28. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

29. Stipulated penalties shall continue to accrue as provided in Paragraphs 23-25 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

30. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 9 and 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

31. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in

28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

32. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of RCRA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

33. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

34. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to the EPA within 72 hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter,

Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

35. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

36. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

37. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any

such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of 33 and 34, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

38. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

39. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

40. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

41. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

42. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

43. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

44. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 42 pertaining to the adequacy of the performance of work undertaken pursuant to this Consent Decree, and in all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Administrative Record. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

c. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 42, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree.

45. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 29. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

46. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

47. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

48. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United

States, Defendant shall provide copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph.

49. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

50. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

51. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain

documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

52. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

53. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 52. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 52. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's SET Facility, whether related to the violations addressed in this Consent Decree or otherwise.

54. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the SET Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 52 of this Section.

55. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and

maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 6901 et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

56. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

57. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

58. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

59. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

By U.S. Mail:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-09300/1

By Express Mail or Courier:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
601 D Street, NW
Washington, DC 20004
Re: DOJ No. 90-5-1-1-09300/1

To EPA:

Director, Office of Enforcement, Compliance, and Environment Justice
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

James F. Van Orden (3RC42)
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

To Defendant:

Steve Rahaim, Esq.
DuPont Legal - Corporate Counsel
1007 Market Street
Dupont Building -7099
Wilmington, DE 19898

60. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

61. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

62. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

63. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

~~64. The terms of this Consent Decree, including any attached appendices, may be~~
modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

65. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 44, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

66. After the Completion Date, if Defendant is in satisfactory compliance with this Consent Decree and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

67. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

68. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 40 of Section IX, until 30 days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

69. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

70. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

71. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

~~72. This Consent Decree constitutes the final, complete, and exclusive agreement and~~
understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

73. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The

Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Entered this 10th day of February, 2012.

Noel L. Hillman

UNITED STATES DISTRICT JUDGE

District of New Jersey

Noel L. Hillman

At Camden, New Jersey

FOR PLAINTIFF UNITED STATES OF AMERICA:



ELLEN MAHAN

Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

11/29/2011
Dated



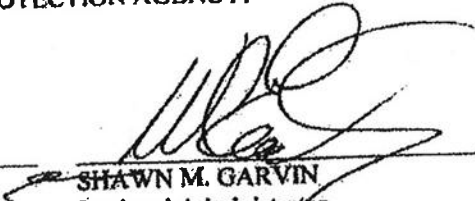
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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

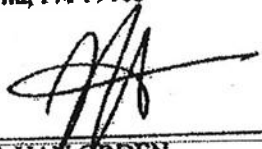
Dated: 11/29/11


SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: 11/29/11


MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency
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Philadelphia, PA 19103

Dated: 11/17/11

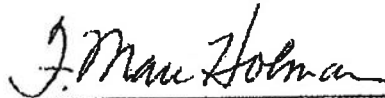

JAMES F. VAN ORDEN
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: 11/23/11

Pamela J. Magokas
for ADAM M. KUSHNER
Office Director
Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

FOR E.I. DUPONT DE NEMOURS AND COMPANY:

11/1/11
Date



F. MARC HOLMAN
Plant Manager
E.I. duPont de Nemours and Company
Chambers Works Plant
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Date



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Appendix A

